

REMARKS

I. Status of the Claims/ Claim Amendments

Claims 1–31 and 33–36 are present in this application. Of those claims, claims 4, 5, 8, 12–15, 19, 20, 23, and 27–30 stand withdrawn from consideration as being directed to non-elected subject matter. Thus, claims 1–3, 6, 7, 9–11, 16–18, 21, 22, 24–26, 31, and 33–36 are currently pending on the merits.

By this Amendment, claims 1, 2, 3, 16, 17, 18, and 31 have been amended without prejudice or disclaimer. Applicant notes that it has amended claims 2, 3, 17, and 18 to recite explicit antecedent basis for the terms “the cross-sectional area” and “the length” in view of objections made by the Office in the Office Action dated January 9, 2009, regarding similar claim language in co-pending U.S. Patent Application No. 11/300,515. While Applicant does not necessarily agree with the Office’s objections in that case, and in particular believes that the claimed language contains proper antecedent basis as inherent characteristics (*see, e.g., M.P.E.P. § 2173.05(e)*), Applicant has amended those claims herein to provide explicit antecedent basis for that language solely in an effort to expedite the prosecution of this application, without prejudice or disclaimer, and without intending to limit the scope of the subject matter of the present claims.

In light of at least the nature of the amendments and the support found in the original specification, Applicant submits that the amendments do not add any prohibited new matter and that the skilled artisan would readily understand Applicant to have been in possession of the claimed subject matter at the time this application was filed. Thus, Applicant requests that the Office enter the amendments without objection or rejection.

II. Rejection Under 35 U.S.C. § 102

A. Rejection of Claims 1–3, 6, 10, 11, 16–18, 21, 25, 26, 31, 33, and 36

The Office rejected independent claims 1, 16, and 31 and their dependent claims 2, 3, 6, 10, 11, 17, 18, 21, 25, 26, 33, and 36 as allegedly anticipated by U.S. Patent No.

3,790,016 to Kron (*Kron*). Office Action at 2–6. Specifically, the Office asserts that *Kron* discloses an apparatus (Fig. 6) including a feeding pathway (24) in communication with both the fluid source and the baby's mouth, and an indicator pathway (comprising 65–69, 73, 74, and 75) in communication with both the fluid source and the baby's mouth. *Id.* For the following reasons, Applicant respectfully requests reconsideration and withdrawal of those rejections.

B. Standard of Law

To show anticipation under 35 U.S.C. § 102, the Office must provide a single reference disclosing, either expressly or inherently, each and every element of the pending claims. See M.P.E.P. § 2131. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim[s].” *Id.* (citation omitted).

C. Applicant's Remarks

To overcome those rejections based on *Kron*, the Examiner has suggested “amend[ing] the claims to say that the second opening is in direct fluid communication with the baby’s mouth as it has a separate opening in the distal end of the nipple, in order to overcome the *Kron* reference.” Office Action at 2. See also *id.* at 4 (suggesting “amend[ing] the claims to say that the second opening is in direct fluid communication with the baby’s mouth as it has a separate opening in the distal end of the nipple, in order to overcome the *Kron* reference”). While Applicant does not necessarily agree with the Office’s position, to expedite prosecution of the pending case, Applicant has amended independent claims 1 and 16 to recite that the second opening of the indicator pathway is in “direct fluid communication” with the baby’s mouth and claim 31 to recite “the suction drawing fluid from a fluid source into the first pathway and the second pathway, wherein the first and second pathways are in direct fluid communication with the baby’s mouth.”

Because *Kron* fails to disclose at least a second opening of the indicator pathway in direct fluid communication with the baby’s mouth, as recited by independent claims 1 and 16, or suction drawing fluid from a fluid source into the first pathway and the second

pathway, wherein the first and second pathways are in direct fluid communication with the baby's mouth, as recited by independent claim 31, Applicant asserts that it cannot support a rejection for anticipation under 35 U.S.C. § 102. For at least this reason, Applicant respectfully requests that the rejections over *Kron* be withdrawn and the claims passed to allowance.

III. Claim Rejections Under 35 U.S.C. § 103

A. *Rejection of Dependent Claims 7, 9, 22, 24, 34, and 35*

The Office asserts that dependent claims 7, 9, 22, 24, 34, and 35 are allegedly obvious over *Kron* in view of either U.S. Patent No. 3,790,016 to Rosenfeld (*Rosenfeld*) or U.S. Patent No. 5,263,599 to Sklar (*Sklar*) or U.S. Patent No. 6,741,523 to Bommarito (*Bommarito*). *Id.* at 6–8. The substance of the Office's rejections can be found in the Office Action at pages 6–8. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of those rejections.

B. *Standard of Law*

Questions regarding obviousness under 35 U.S.C. § 103(a) are resolved on the basis of underlying factual determinations, including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18, 148 U.S.P.Q. (BNA) 459, 467 (1966); *see also KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734, 82 U.S.P.Q.2d (BNA) 1385, 1391 (2007) (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”). The Office must also consider each prior art reference relied upon in a rejection “in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. (BNA) 303 (Fed. Cir. 1983).

C. Applicant's Remarks

As explained above (see *supra* Part II.C), *Kron* fails to disclose at least a second opening of the indicator pathway in direct fluid communication with the baby's mouth, as recited by independent claims 1 and 16, or suction drawing fluid from a fluid source into the first pathway and the second pathway, wherein the first and second pathways are in direct fluid communication with the baby's mouth, as recited by independent claim 31, deficiencies that are not cured by either *Rosenfeld*, *Sklar*, or *Bommarito*. For those reasons, Applicant respectfully submits that *Kron*, whether taken alone or in any combination with *Rosenfeld*, *Sklar*, or *Bommarito*, fails to render dependent claims 7, 9, 22, 24, 34, and 35 obvious. As such, Applicant respectfully requests that the rejections under 35 U.S.C. § 103 over *Kron* in view of *Sklar*, *Kron* in view of *Rosenfeld*, and *Kron* in view of *Bommarito*, be withdrawn and the pending claims passed to allowance.

IV. Conclusion

For at least the above-outlined reasons, Applicant's amended independent claims 1, 16, and 31 should be allowable. Pending dependent claims 2, 3, 6, 7, and 9–11 depend directly on claim 1, and consequently are allowable for at least the same reasons that claim 1 is allowable. Pending dependent claims 17, 18, 21, 22, and 24–26 depend on claim 16, and consequently are allowable for at least the same reasons claim 16 is allowable. Pending dependent claims 33–36 depend on claim 31, and consequently are allowable for at least the same reasons claim 31 is allowable. In addition, each of withdrawn claims 4, 5, 8, 12–15, 19, 20, 23, and 27–30 ultimately depend from allowable independent claim 1 or 16. For at least that reason, claims 4, 5, 8, 12–15, 19, 20, 23, and 27–30 should also be allowable. Therefore, Applicant also respectfully requests rejoinder and allowance of withdrawn claims 4, 5, 8, 12–15, 19, 20, 23, and 27–30.

Applicant respectfully submits that the Office Action contains a number of assertions concerning the related art and the claims. Regardless of whether those assertions are addressed specifically herein, Applicant respectfully declines to automatically subscribe to them.

If the Office has any questions regarding this Response or the application in general, Applicant respectfully requests that the Office contact the undersigned representative at (404) 653-6553.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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